

ACCESS TO SENSITIVE INFORMATION

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, REL, RSA, T&MC – 11/08] [NFS 1852.237-72 6/05]

(a) As used in this clause, "sensitive information" refers to:

- (1) information that a contractor has developed and marked as proprietary, confidential, or with a limited or restricted rights notice, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged;
- (2) information that is marked JPL/Caltech Proprietary, Proposal Sensitive or Business Discreet;
- (3) design information or guidance as may be embodied in or derived from computer-aided engineering, computer-aided design, analysis models, manufacturing models, drawings or translations of any of the foregoing, regardless of whether such information or guidance is marked or unmarked; or
- (4) information obtained directly from JPL electronic resources, such as JPL computers, servers, networks, electronic libraries or document repositories, regardless of whether such information is marked or unmarked.

(b) If performing this subcontract entails access to sensitive information, as defined above, the Subcontractor agrees to:

- (1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this subcontract, and not to improve its own competitive position in another procurement nor for any other purpose.
- (2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure using the same standard of care as the Subcontractor uses to protect its own confidential information, but under no circumstances less than a reasonable standard of care.
- (3) Maintain any restrictive markings on sensitive information coming into its possession and on any copies thereof.
- (4) Allow access to sensitive information only to those employees that need it to perform services under this subcontract.
- (5) Preclude access and disclosure of sensitive information to persons and entities outside of the Subcontractor's organization.
- (6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this subcontract and to safeguard it from unauthorized use and disclosure.
- (7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this subcontract.
- (8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, immediately report any breaches to the JPL Subcontracts Manager, and implement any necessary corrective actions.
- (9) Return to JPL or destroy all sensitive information, and copies thereof, no later than the effective date of the termination or expiration of this subcontract. Within thirty days of that effective date, the Subcontractor shall confirm in writing to JPL that all sensitive information received during the course of this subcontract has been returned or destroyed.

- (c) The Subcontractor will comply with all procedures and obligations specified in any Organizational Conflicts of Interest Avoidance Plan incorporated into this subcontract.
- (d) The nature of the work on this subcontract may subject the Subcontractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this subcontract establishes a high standard of accountability and trust, JPL will carefully review the Subcontractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this subcontract for default, in addition to any other rights and remedies available by law to the Government, JPL or other provider of sensitive information.
- (e) The Subcontractor shall not be liable for the use or disclosure of sensitive information that the Subcontractor can demonstrate is: (1) in the public domain other than by a breach of this clause by the Subcontractor; (2) received by the Subcontractor from a third party without any obligation of confidentiality; (3) known to the Subcontractor without any limitation on use or disclosure prior to its receipt from JPL under this subcontract; (4) independently developed by the employees of the Subcontractor as evidenced by written documentation; or (5) generally made available to third parties by the originator of the sensitive information without restriction on disclosure.
- (f) Unless otherwise specifically provided in this subcontract, no warranty, express or implied, including without limitation any warranty of accuracy, utility, merchantability or of fitness for a particular purpose, is provided hereunder for any of the disclosed sensitive information.
- (g) The Subcontractor's obligations under this clause shall survive the expiration or termination of this Subcontract.
- (h) Notwithstanding paragraph (b)(5), the Subcontractor may submit a written request to the JPL Subcontracts Manager for authorization to disclose sensitive information to its lower-tier subcontractors. If JPL authorizes the disclosure, the Subcontractor before making any such disclosure must include the substance of this clause, suitably modified to reflect the relationship of the parties, in any lower-tier subcontract that will involve access to sensitive information. The Subcontractor shall also require an acknowledgement in any such lower-tier subcontract that: (1) the corresponding clause is being included for the benefit of JPL as a third-party beneficiary, and (2) in addition to any other rights it may have, JPL is intended to have a right of direct action against the lower-tier subcontractor, or any other person to whom that subcontractor has released or disclosed that sensitive information, to seek damages for any breach and/or to seek enforcement of that clause in the lower-tier subcontract.